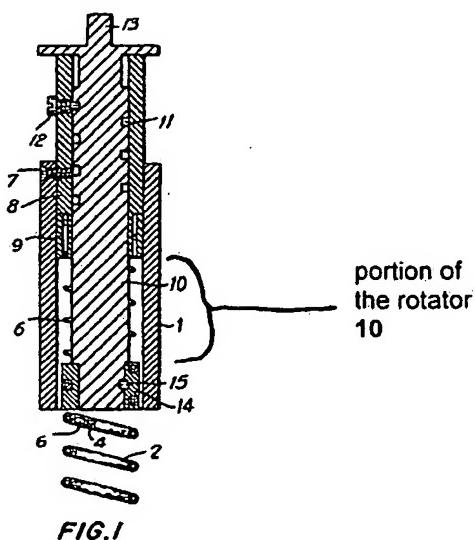


REMARKS

The present application has been reviewed in light of the Office Action mailed February 26, 2007. Claims 1-18 are pending. It is respectfully submitted that the pending claims are patentable over the prior art. Reconsideration of the present application is respectfully requested in view of the following arguments and remarks.

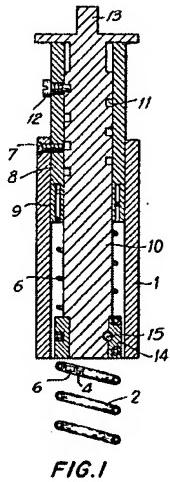
In the Office Action mailed on February 26, 2007, claims 1, 6 and 7 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,204,541 to Kapitanov (“Kapitanov”). The Office Action asserted that Kapitanov discloses an applicator for attaching fasteners to body tissue comprising, *inter alia*, a distal portion having an elongate outer tube and a rotator including a longitudinal groove extending along at least a portion of the length of the rotator, the groove configured to receive a portion of a fastener. Moreover, the Office Action stated that Kapitanov discloses a nose piece attached to the terminal end, the nose piece having structure projecting perpendicularly toward a longitudinal axis of the outer tube and adapted to engage the plurality of fasteners.



In response to the applicants' remarks dated on November 21, 2006, the Office Action included an annotated version of Figure 1 of Kapitanov (reproduced hereinabove) and averred that Kapitanov discloses a longitudinal groove (between elements 10 and 1) extending along at least a portion of the length of the rotator.

Claim 1 recites an applicator for attaching fasteners to body tissue including, *inter alia*, "a rotator cooperating with the actuator and including a longitudinal groove extending along at least a portion of the length of the rotator, the groove configured to receive a portion a fastener."

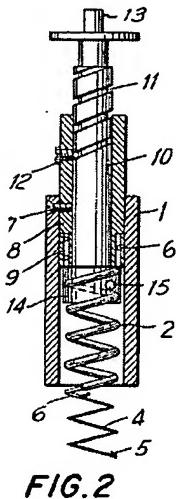
In contrast, Kapitanov discloses a surgical instrument having a hollow body 1, a tubular needle 2, a cylindrical rod 10, and a cylindrical sleeve 14. As shown below in FIG. 1 of Kapitanov, the cylindrical rod 10 is disposed within the hollow body 1 such that an open annular space is defined therebetween. Contrary to the assertion of the Office Action, this annular space is not a longitudinal groove as recited in claim 1.



The purported longitudinal groove of Kapitanov only exists when the rod 10 is located within the hollow body 1 and is not intrinsic to the rod 10. Separating the rod 10 from the hollow body 1 eliminates the annular space therebetween and thus the rod 10 of Kapitanov does

not include “a longitudinal groove” as recited in claim 1.

Additionally, as seen in FIG. 2 below, the area between rod 10 and hollow body 1 is configured to receive sleeve 14. FIG. 2 specifically shows how this area receives sleeve 14 during operation. Sleeve 14, as shown in FIG. 2, occupies the area between cylindrical rod 10 and hollow body 1.



In light of the foregoing, applicants respectfully submit that Kapitanov fails to anticipate or suggest claim 1 and that the rejection of the Office Action has been overcome. Since claims 6 and 7 depend from claim 1, for at least the reasons presented above, applicants respectfully submit that claims 6 and 7 are also allowable over Kapitanov and the rejection of the Office Action has been overcome.

Claims 2 and 3 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kapitanov in view of U.S. Patent No. 4,596,350 to Smith et al. (“Smith”). According to the Office Action, Kapitanov discloses the devices recited in claims 2 and 3 except for a lock/clip indicator and a load spring. The Office Action stated that Smith discloses a lock/clip indicator

for engaging a plurality of fasteners from the applicator and a load spring for applying longitudinal forces against the lock/clip indicator.

As previously discussed, Kapitanov does not disclose or suggest a rotator including a "longitudinal groove extending along at least a portion of the length of the rotator, the groove configured to receive a portion a fastener" as recited in claim 1. Adding the lock/clip indicator and load spring from Smith to Kapitanov fails to disclose or suggest an applicator including a rotator having a longitudinal groove as recited in claim 1. Smith fails to disclose or suggest any additional features that, in combination with Kapitanov, would suggest the applicator of claims 2 and 3. Since claims 2 and 3 depend from claim 1, it is respectfully submitted that these claims are in condition for allowance and the rejection of the Office Action has been overcome.

Claims 4 and 5 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kapitanov in view of U.S. Patent No. 5,433,721,721 to Hooven et al. ("Hooven"). The Office Action asserted that Kapitanov discloses the devices recited in claims 4 and 5 except for a thread form contained in an interior of the terminal end. The Office Action asserted that Hooven discloses a thread form contained in an interior of the terminal end adapted to engage the plurality of fasteners and being an interlock spring fixedly retained in the interior of the terminal end.

As previously discussed, Kapitanov does not disclose or suggest a rotator including a "longitudinal groove extending along at least a portion of the length of the rotator, the groove configured to receive a portion a fastener" as recited in claim 1. The "thread form" alleged in the Office Action actually refers to the threaded shaft disclosed by Hooven that rotates to reposition the anvil from an open position to a closed position relative to a distal end of the instrument. The

threaded shaft disclosed in Hooven does not engage any of the fasteners. In addition, Hooven fails to disclose or suggest an interlock spring. Thus, Hooven fails to disclose or suggest the features recited in claims 4 and 5.

Combining the threaded shaft of Hooven to Kapitanov fails to disclose or suggest an applicator including a rotator having a longitudinal groove as recited in claim 1. Hooven fails to disclose or suggest any additional features that, in combination with Kapitanov, would suggest the applicator of claims 4 and 5. Since claims 4 and 5 depend from claim 1, it is respectfully submitted that these claims are allowable for at least this reason, and the rejection of the Office Action has been overcome.

Claim 8 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Kapitanov in view of U.S. Patent No. 5,100,420 to Green et al. (“Green”). According to the Office Action, Kapitanov discloses the device recited in claim 8 except for a distal portion being disposable and the proximal portion being reusable. The Office Action noted that Green discloses a distal portion being disposable and the proximal portion being reusable.

As discussed above, Kapitanov does not disclose or suggest a rotator including a “longitudinal groove extending along at least a portion of the length of the rotator the groove configured to receive a portion a fastener,” as recited in claim 1. Adding the distal and proximal portions from Green to Kapitanov fails to disclose or suggest an applicator including a rotator having a longitudinal groove as recited in claim 1. Green fails to disclose or suggest any additional features that, in combination with Kapitanov, would suggest the applicator of claim 8. Since claim 8 depends from claim 1, it is respectfully submitted that this claim is in condition for allowance and the rejection of the Office Action has been overcome.

Claims 9 and 14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kapitanov in view of U.S. Patent No. 5,607,436 to Pratt et al. (“Pratt”). The Office Action asserted that Kapitanov discloses the devices recited in claims 9 and 14 except for a lever having a first end, a midsection, a second end, a lead screw, and a nut driver. The Office Action stated that Pratt discloses a lever having a first end, a midsection, a second end, a lead screw, and a nut driver.

As discussed hereinabove, Kapitanov does not disclose or suggest a rotator including a “longitudinal groove extending along at least a portion of the length of the rotator, the groove configured to receive a portion a fastener,” as recited in claim 1. Adding the lever from Pratt to Kapitanov fails to disclose or suggest an applicator including a rotator having a longitudinal groove as recited in claim 1. Pratt fails to disclose or suggest any additional features that, in combination with Kapitanov, would suggest the applicator of claims 9 and 14. Since claims 9 and 14 depend from claim 1, it is respectfully submitted that these claims are in condition for allowance and the rejection of the Office Action has been overcome.

Claim 11 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Kapitanov in view of Pratt. The Office Action noted that Kapitanov discloses the device recited in claim 11 except for a lever having a midsection extension. The Office Action further stated that Pratt discloses a lever having a midsection extension.

As discussed above, Kapitanov does not disclose or suggest a rotator including a “longitudinal groove extending along at least a portion of the length of the rotator, the groove configured to receive a portion a fastener,” as recited in claim 1. Adding the lever from Pratt to Kapitanov fails to disclose or suggest an applicator including a rotator having a longitudinal

groove as recited in claim 1. Pratt fails to disclose or suggest any additional features that, in combination with Kapitanov, would suggest the applicator of claim 11. Since claim 11 depends from claim 1, it is respectfully submitted that this claim is in condition for allowance and the rejection of the Office Action has been overcome.

Claims 12, 13, 16 and 18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kapitanov in view of Pratt. According to the Office Action, Kapitanov discloses the devices recited in claims 12, 13, 16, and 18 except for gear teeth, a spring loaded pawl, and a ratchet mechanism. The Office Action asserted that Pratt discloses gear teeth formed within the interior of a handle, a spring loaded pawl pivotally attached to the midsection extension and adapted to engage the gear teeth, the releasable engagement means being a ratchet mechanism.

As discussed hereinabove, Kapitanov does not disclose or suggest a rotator including a “longitudinal groove extending along at least a portion of the length of the rotator, the groove configured to receive a portion a fastener,” as recited in claim 1. Adding gear teeth, a spring loaded pawl, and a ratchet mechanism from Pratt to Kapitanov fails to disclose or suggest an applicator including a rotator having a longitudinal groove as recited in claim 1. Pratt fails to disclose or suggest any additional features that, in combination with Kapitanov, would suggest the applicator of claims 12, 13, 16, and 18. Since claims 12, 13, 16, and 18 depend from claim 1, it is respectfully submitted that these claims are in condition for allowance and the rejection of the Office Action has been overcome.

Claim 17 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Kapitanov in view of U.S. Patent No. 5,487,500 to Knodel et al. (“Knodel”). The Office Action stated that Kapitanov discloses the device recited in claim 17 except for a mid-section extension with

formed plurality of teeth. The Office Action asserted that Knodel discloses a mid-section extension with formed plurality of teeth.

As previously discussed, Kapitanov does not disclose or suggest a rotator including a “longitudinal groove extending along at least a portion of the length of the rotator the groove configured to receive a portion a fastener,” as recited in claim 1. Adding the mid-section extension from Knodel to Kapitanov fails to disclose or suggest an applicator including a rotator having a longitudinal groove as recited in claim 1. Knodel fails to disclose or suggest any additional features that, in combination with Kapitanov, would suggest the applicator of claim 17. Since claim 17 depends from claim 1, it is respectfully submitted that this claim is in condition for allowance and the rejection of the Office Action has been overcome.

Claims 10 and 15 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kapitanov. The Office Action asserted that Kapitanov discloses the devices recited in claims 10 and 15 except for the lead screw being a high helix lead screw and that it would have been obvious to provide a high helix lead screw.

As discussed above, Kapitanov does not disclose or suggest a rotator including a “longitudinal groove extending along at least a portion of the length of the rotator the groove configured to receive a portion a fastener,” as recited in claim 1. Adding a high helix lead screw as asserted in the Office Action still fails to suggest the device recited in claim 1. Since claims 10 and 15 depend from claim 1, it is respectfully submitted that these claims are in condition for allowance and the rejection of the Office action has been overcome.

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In view of the foregoing, reconsideration of the application and allowance of claims 1-18 is earnestly solicited. Should the Examiner desire a telephonic interview to resolve any outstanding matters, the Examiner is sincerely invited to contact the undersigned at (631) 501-5713.

Respectfully submitted,

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